

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TAMMY JOHNSON and VANESSA
DETTWILER, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

TRACTOR SUPPLY COMPANY, a Delaware
Corporation,

Defendant.

NO.

**CLASS AND COLLECTIVE ACTION
COMPLAINT**

JURY DEMAND

Plaintiffs Tammy Johnson and Vanessa Dettwiler, by their undersigned attorneys, for this class action complaint against Defendant Tractor Supply Company (“Defendant”), allege as follows:

I. INTRODUCTION

1.1 Nature of Action. Plaintiffs bring this action on behalf of themselves and all similarly situated employees against Defendant for engaging in a systematic scheme of wage and hour violations. The scheme involves systemic miscalculation of overtime and failure to affirmatively provide meal and rest breaks. Plaintiffs bring their claims as a class action under

1 Federal Rule of Civil Procedure (“FRCP”) 23 on behalf of a Washington state class, and as a
2 nationwide collective action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §216(b).

3 **II. JURISDICTION AND VENUE**

4 2.1 Defendant is within the jurisdiction of this Court. This Court has jurisdiction of
5 Plaintiffs’ FLSA claims under 28 U.S.C. § 1331 because these claims arise under federal law, 29
6 U.S.C. §§ 201-219. This Court also has supplemental jurisdiction over the Washington state law
7 claims pursuant to 28 U.S.C. § 1367(a) because these claims are so related to the federal claims
8 that they form part of the same case or controversy under Article III of the United States
9 Constitution.

10 2.2 Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(1) because
11 Defendant does sufficient business in this District to subject it to personal jurisdiction herein and
12 pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving
13 rise to the claims occurred in this District.

14 **III. PARTIES**

15 3.1 Plaintiff Tammy Johnson is a citizen of Washington State. Defendant hired her
16 as a non-exempt Assistant Manager in 2009. During the three years prior to filing this complaint,
17 Plaintiff Johnson worked as both an exempt Acting Manager, as well as a non-exempt Assistant
18 Manager. When she worked as a non-exempt Assistant Manager during the last three years,
19 Plaintiff Johnson regularly worked pay periods in which she both worked overtime and earned a
20 non-discretionary bonus, yet Defendant failed to pay her at the proper overtime rate by excluding
21 the non-discretionary bonus from the regular rate of pay. Defendant also failed to affirmatively
22 provide Plaintiff Johnson with thirty-minute meal breaks when she worked as a non-exempt
23 Assistant Manager during the last three years. Moreover, Defendant failed to affirmatively
24

1 provide her with paid ten-minute rest breaks for every four hours of work and regularly required
2 her to work more than three consecutive hours without a rest break.

3 3.2 Plaintiff Vanessa Dettwiler is a citizen of the state of Washington. Defendant
4 hired her as a non-exempt receiver at Defendant's Spanaway location on or around April 6, 2012.
5 Plaintiff Dettwiler began working at Defendant's Tacoma location on or around March 18, 2015.
6 Plaintiff Dettwiler regularly worked pay periods in which she both worked overtime and earned
7 a non-discretionary bonus. Because Defendant failed to include the non-discretionary bonus in
8 the regular rate of pay for purposes of paying overtime, however, Defendant failed to pay all
9 overtime to Plaintiff Dettwiler. Defendant also failed to affirmatively provide Plaintiff Dettwiler
10 with thirty-minute meal breaks. Moreover, Defendant failed to affirmatively provide her with
11 paid ten-minute rest breaks for every four hours of work and regularly required her to work more
12 than three consecutive hours without a rest break.

13 3.3. Defendant Tractor Supply Company ("TSC" or "Defendant") is a Delaware
14 corporation with its headquarters in Tennessee. TSC has employed thousands of employees in
15 the United States and hundreds of employees in Washington, including Plaintiffs and proposed
16 Class members. It operates over 1,600 stores in 49 states. TSC conducts business, including
17 employing scores of employees, in the Western District of Washington.

18 **IV. COLLECTIVE ACTION ALLEGATIONS**

19 4.1 Pursuant to 29 U.S.C. §216(b), Plaintiffs bring this case as a collective action on
20 behalf of all employees of Defendant in the United States who are similarly situated, i.e., all
21 employees who have worked for Defendant in the United States in a position classified by
22 Defendant as non-exempt and both 1) worked over 40 hours per week in at least one week, and
23 2) earned a non-discretionary bonus during at least one pay period between December 12, 2014
24

1 through the conclusion of this action (the “FLSA Period”). These employees shall be referred to
 2 as the “FLSA Class.”

3 4.2 The named Plaintiffs are similarly situated to the members of the proposed Class
 4 because they were employed by Defendant in non-exempt store-based positions, they worked
 5 overtime and earned non-discretionary bonuses based on the profitability of their store, and they
 6 were systematically denied full compensation for all overtime hours worked.

7 V. CLASS ACTION ALLEGATIONS

8 5.1 Class Definition. Pursuant to FRCP 23, Plaintiffs also bring this case as a class
 9 action against Defendant on behalf of an opt-out Washington Class (“the Washington Class” or
 10 “the Class”) defined as follows:

11 All individuals who have worked in one of Defendant’s stores in Washington in
 12 a position Defendant classified as non-exempt at any time between December 12,
 2014 and the date of final disposition of this action.

13 5.2 Numerosity. Plaintiffs believe there are hundreds of current or former employees
 14 of Defendant in the Washington Class. The members of the Class are so numerous that joinder
 15 of all members is impracticable. Moreover, the disposition of the claims of the Class in a single
 16 action will provide substantial benefits to all parties and the Court.

17 5.3 Commonality. There are numerous questions of law and fact common to
 18 Plaintiff and Washington Class members. These questions include, but are not limited to, the
 19 following:

20 a. Whether Defendant has engaged in a common course of failing to properly
 21 calculate overtime and compensate Class members for all overtime hours worked;

22 b. Whether Defendant has engaged in a common course of failing to provide
 23 Class members with a ten-minute rest break for every four hours of work;

1 c. Whether Defendant has engaged in a common course of requiring Class
2 members to work more than three consecutive hours without a rest break;

3 d. Whether Defendant has engaged in a common course of failing to pay
4 Class members an additional ten minutes of compensation for each rest break the Class members
5 miss;

6 e. Whether Defendant has engaged in a common course of failing to provide
7 Class members with an uninterrupted, thirty-minute meal break for every five hours of work;

8 f. Whether Defendant has violated RCW 49.46.130;

9 g. Whether Defendant has violated RCW 49.46.090;

10 h. Whether Defendant has violated RCW 49.52.050;

11 i. Whether Defendant has violated RCW 49.12.020;

12 j. Whether Defendant has violated WAC 296-126-092;

13 k. Whether Defendant has violated WAC 296-128-550; and

14 l. The nature and extent of class-wide injury and the measure of
15 compensation for such injury.

16 5.4 Typicality. Plaintiffs' claims are typical of the claims of the Washington Class.
17 Plaintiffs work for Defendant as non-exempt employees and thus are members of the Class.
18 Plaintiffs' claims, like the claims of the Class, arise out of the same common course of conduct
19 by Defendant and are based on the same legal and remedial theories.

20 5.5 Adequacy. Plaintiffs will fairly and adequately protect the interests of the
21 Washington Class. Plaintiffs have retained competent and capable attorneys who have
22 significant experience in complex employment law litigation and class action litigation.
23 Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the
24

1 Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests
2 that are contrary to or that conflict with those of the Class.

3 5.6 Predominance. Defendant has engaged in a common course of wage and hour
4 abuse toward Plaintiffs and members of the Washington Class. The common issues arising from
5 this conduct that affect Plaintiffs and members of the Class predominate over any individual
6 issues. Adjudication of these common issues in a single action has important and desirable
7 advantages of judicial economy.

8 5.7 Superiority. Plaintiffs and Class members have suffered and will continue to
9 suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. Absent a
10 class action, however, most Class members likely would find the cost of litigating their claims
11 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation
12 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
13 provides a forum for small claimants, and deters illegal activities. There will be no significant
14 difficulty in the management of this case as a class action. The Class members are readily
15 identifiable from Defendant's records.

16 VI. SUMMARY OF FACTUAL ALLEGATIONS

17 6.1 Common Course of Conduct: Failure to Pay Proper Overtime Compensation.
18 Defendant's common course of wage and hour abuse against Plaintiffs and Washington Class
19 and FLSA Class members includes routinely failing to properly compensate for all overtime
20 hours worked at the correct regular rate. Throughout the Washington Class period and FLSA
21 period, Defendant employed thousands of store-based employees in over 1,600 locations in the
22 United States, at least 18 of which are in Washington.

23 6.1.1 Defendant has regularly paid a non-discretionary store sales bonus based
24 on monthly store sales.

1 6.1.2 Plaintiffs' FLSA and Washington Class overtime claims are based on
2 Defendant's failure to include the non-discretionary, regularly paid, store sale bonuses in
3 Plaintiffs' regular rate of pay when calculating overtime. When paying overtime to Plaintiffs
4 and other non-exempt store-based employees, Defendant incorrectly paid these employees
5 at one-and-one-half times their *hourly* rate, instead of using the higher regular rate of pay
6 that includes the non-discretionary bonuses. This resulted in Defendant withholding
7 overtime pay from their non-exempt store-based employees, including Plaintiffs, thus
8 systematically depriving Plaintiffs and the FLSA and Washington Classes of proper overtime
9 compensation.

10 6.2 Common Course of Conduct Against Class: Failure to Provide Meal Breaks.
11 Defendant has engaged in, and continue to engage in, a common course of failing to provide their
12 hourly paid employees in Washington with an uninterrupted, thirty-minute meal break for every
13 five hours of work and requiring or permitting their hourly paid employees to work more than
14 five consecutive hours without a meal break.

15 6.2.1 Plaintiffs and Class members regularly are unable to take the full, thirty-
16 minute meal breaks to which they are entitled because of how busy Defendant's stores are.

17 6.2.2 Plaintiffs and Class members often eat only while on-the-go to ensure they
18 can complete all their necessary work.

19 6.2.3 Defendant has had actual or constructive knowledge of the fact that hourly
20 paid employees in Washington do not receive uninterrupted, thirty-minute meal breaks for every
21 five hours of work and are required or permitted to work more than five consecutive hours
22 without a meal break.

1 6.3 Common Course of Conduct: Failure to Provide Proper Rest Breaks. Defendant
2 has engaged in, and continues to engage in, a common course of failing to provide paid rest
3 breaks to their hourly paid employees in Washington.

4 6.3.1. Defendant does not provide hourly paid employees ten-minute rest breaks
5 for every four hours of work; it requires hourly paid employees to work more than three
6 consecutive hours without a rest break; and it does not provide ten minutes of additional pay for
7 each rest break employees miss.

8 6.3.2 Each time an employee misses a rest break, Defendant receives the benefit
9 of 10 minutes of work without paying for the hours worked.

10 6.3.3 Defendant's hourly paid employees in Washington do not have time to
11 take rest breaks because of the volume of their work, and Defendant has no system in place to
12 relieve employees during busy periods in order for the employees to take rest breaks.

13 6.3.4 Defendant has had actual or constructive knowledge of the fact that hourly
14 paid employees do not receive ten-minute rest breaks for every four hours of work, must work
15 more than three consecutive hours without a rest break, and do not receive ten minutes of
16 additional pay for each rest break they miss.

17 **VII. FIRST CLAIM FOR RELIEF**
18 **(Violation of 29 U.S.C. §207—**
19 **Failure to Pay Proper Overtime under FLSA)**
 On behalf of FLSA Class

20 7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
21 in the preceding paragraphs.

22 7.2 Defendant regularly engages in commerce and its employees are engaged in
23 interstate commerce.
24

1 7.3 Defendant is and has been an employer for purposes of the FLSA, 29 U.S.C.
2 §203(d).

3 7.4 Plaintiffs and the proposed FLSA Class have been employees of Defendant for
4 purposes of the FLSA, 29 U.S.C. §203(e).

5 7.5 While employed by Defendant, Plaintiffs and proposed FLSA Class members
6 performed overtime which Defendant failed to compensate at one and one-half times the regular
7 rate of pay for hours worked in excess of forty hours per week, in violation of 29 U.S.C. § 207.

8 7.6 Throughout the class period, Defendant has willfully, deliberately, and knowingly
9 refused to properly pay Plaintiffs and proposed Class members for all overtime hours worked.

10 7.7 As a result of these unlawful acts, Plaintiffs and the FLSA Class have been
11 deprived of compensation in amounts to be determined at trial, and pursuant to 29 U.S.C. §
12 216(b), Plaintiffs and the FLSA Class are entitled to recovery of such damages, and an additional
13 equal amount as liquidated damages, as well as attorneys' fees and costs.

14 **VIII. SECOND CLAIM FOR RELIEF**

15 **(Violations of RCW 49.46.130 – Failure to Pay Proper Overtime Wages)**

On Behalf of Washington Class

16 8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
17 in the preceding paragraphs.

18 8.2 As a result of the actions alleged above, Defendant failed to properly pay Plaintiffs
19 and Class members for all hours worked above 40 in a week at a rate of not less than one and
20 one-half times their proper regular rate of pay.

21 8.3 RCW 49.46.130 provides that “no employer shall employ any of his employees
22 for a workweek longer than 40 hours unless such employee receives compensation for his
23 employment in excess of the hours above specified at a rate not less than one and one-half times
24 the regular rate at which he is employed.”

1 8.4 By the actions alleged above, Defendant has violated the provisions of
2 RCW 49.46.130.

3 8.5 As a result of these unlawful acts, Plaintiffs and the Class have been deprived of
4 compensation in amounts to be determined at trial, and pursuant to RCW 49.46.090, Plaintiffs
5 and the Class are entitled to recovery of such damages, including interest thereon, as well as
6 attorneys' fees and costs.

7 **IX. THIRD CLAIM FOR RELIEF**
8 **(Violations of RCW 49.12.020 and WAC 296-126-092 –**
9 **Failure to Provide Proper Rest and Meal Periods)**
10 *On Behalf of Washington Class*

11 9.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
12 in the preceding paragraphs.

13 9.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington demands
14 that all employees be protected from conditions of labor which have a pernicious effect on their
15 health. The state of Washington, therefore, exercising herein its police and sovereign power
16 declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

17 9.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any
18 industry or occupation within the state of Washington under conditions of labor detrimental to
19 their health.”

20 9.4 Pursuant to RCW 49.12.005 and WAC 296-126-002, “conditions of labor”
21 “means and includes the conditions of rest and meal periods” for employees.

22 9.5 WAC 296-126-092 requires that employers shall provide employees certain rest
23 and meal periods.

24 9.6 Defendant has failed or refused to create or enforce adequate employment policies
and procedures for providing rest and meal breaks.

 9.7 By the actions alleged above, including the failure to provide Plaintiffs and Class
members with proper rest and meal periods, Defendant has violated the provisions of
RCW 49.12.020 and WAC 296-126-092.

1 9.8 As a result of these unlawful actions, Plaintiffs and the Class have been deprived
 2 of compensation in amounts to be determined at trial, and Plaintiffs and the Class are entitled to
 3 the recovery of such damages, including interest thereon, as well as attorneys' fees and costs
 4 pursuant to RCW 49.48.030.

5 **X. FOURTH CLAIM FOR RELIEF**

6 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**

7 *On Behalf of Washington Class*

8 10.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
 9 in the preceding paragraphs.

10 10.2 RCW 49.52.050 provides that any employer or agent of any employer who,
 11 “[w]illfully and with intent to deprive the employee of any party of his wages, shall pay any
 12 employee a lower wage than the wage such employer is obligated to pay such employee by any
 13 statute, ordinance, or contract” shall be guilty of a misdemeanor.

14 10.3 Defendant’s violations of RCW 49.46.130 and WAC 296-126-092 were willful
 15 and constitute violations of RCW 49.52.050.

16 10.4 RCW 49.52.070 provides that any employer who violates the provisions of
 17 RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, plus
 18 attorneys’ fees, and costs.

19 10.5 By the actions alleged above, Defendant has violated the provisions of
 20 RCW 49.52.050.

21 10.6 As a result of the willful and unlawful acts of Defendant, Plaintiff and the Class
 22 have been deprived of compensation in amounts to be determined at trial, and pursuant to
 23 RCW 49.52.070, Plaintiff and the Class are entitled to recovery of twice the amount of such
 24 compensation as well as attorneys’ fees and costs.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the FLSA Class and Washington Class, pray for relief against Defendant, as follows:

A. Rule 23 Certification of the proposed Washington Class for the claims against Defendant;

B. Certification of the FLSA class as a collective action under 29 U.S.C. § 216(b);

C. A declaration that Defendant is financially responsible for notifying all FLSA Class and Washington Class members of its wage and hour violations;

C. Appointment of Plaintiffs as representatives of the FLSA Class and Washington Class;

D. Appointment of the undersigned counsel as counsel for the FLSA Class and Washington Class;

E. A declaration that Defendant's actions complained of herein violate 29 U.S.C. §207, RCW 49.46.130, RCW 49.52.050, RCW 49.12.020, and WAC 296-126-092.

F. And order enjoining Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in the unlawful and wrongful conduct set forth herein;

G. An award to Plaintiffs and the FLSA Class and Washington Class of compensatory, liquidated, and exemplary damages, as allowed by law;

H. An award to Plaintiffs and the FLSA Class and Washington Class of attorneys' fees and costs, as allowed by law;

I. An award to Plaintiffs and the FLSA Class and Washington Class of prejudgment and post-judgment interest, as provided by law;

1 J. Permission for Plaintiffs and the FLSA Class and Washington Class to have leave
2 to amend the Complaint to conform to the evidence presented at trial; and

3 K. Such other and further relief as the Court deems necessary, just, and proper.

4 RESPECTFULLY SUBMITTED AND DATED this 12th day of December, 2017.

5 FRANK FREED SUBIT & THOMAS LLP

6 By: /s/ Marc C. Cote, WSBA #39824
7 Michael C. Subit, WSBA #29189
8 Email: msubit@frankfreed.com
9 Marc Cote, WSBA #39824
10 Email: mcote@frankfreed.com
11 705 Second Avenue, Suite 1200
12 Seattle, Washington 98104
13 Telephone: (206) 682-6711
14 Facsimile: (206) 682-0401

15 MICHAEL MALK, ESQ., APC
16 Michael Malk, *Pro Hac Vice* Pending
17 Email: mm@malklawfirm.com
18 1180 S. Beverly Drive, Suite 302
19 Telephone: (310) 203-0016
20 Facsimile: (310) 499-5210

21 *Attorneys for Plaintiffs, Proposed FLSA Class, and*
22 *Proposed Washington Class*
23
24